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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY OF PETITIONER TO BRIEF AND ARGUMENT OF THE UNITED STATES.

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REPLY BRIEF OF PETITIONER.

I.

The Solicitor General has not replied to the legal contentions made in the argument supporting the petition for certiorari. He says in his argument (p. 12) that in his brief filed in the *Baumgartner* case, 322 U. S. 665, he discussed at length the question whether a judgment of naturalization is *res adjudicata* of the right to citizenship. The action of the Solicitor General in referring to his arguments in another case on this important question operates to place petitioner at a great disadvantage here as it deprives his counsel of an opportunity to reply thereto.

If the arguments referred to as having been made elsewhere were in anywise persuasive they should have been given space in his brief filed in this cause. It can only be concluded that such arguments do not answer the particular viewpoints advanced in the petition and brief filed herein.

But this much is certain,—this Court has never decided that question of *res adjudicata* adversely to the contentions made by petitioner. On the contrary the views expressed in *Ness* v. *U. S.*, 245 U. S. 319, by Justice Brandeis, and those stated by Justice Douglas and Justice Rutledge in the *Schneiderman* case, indicate that the point is well taken. And since the decision of *Tu Tun* v. *U. S.*, 270 U. S. 568, the Government must appeal if it would have a record reviewed for errors in the proceeding.

The question was raised in the *Schneiderman* case, 320 U. S. 118, 124, but not decided, and if argued, as the Solicitor General says, in the *Baumgartner* case, it was not there decided. Each of these cases were decided upon the facts in the record, each holding that the evidence adduced was not sufficient to sustain the action of the trial court in canceling the certificate of naturalization.

In the *Schneiderman* case, 320 U. S. 118, the decision involved illegal procurement only. The majority opinion, holding that there was not sufficient proof to support the judgment of the trial court, went no further. But Justice Douglas and Justice Rutledge, each concurring in separate opinions, based their views on the rule of law here contended for by petitioner.

The question does not appear to have been mentioned in the *Baumgartner* case. But Justice Frankfurter indi-

cates in the opinion written by him that the court was not unmindful of the fact that there was a prior adjudication to be dealt with. The opinion says (p. 675):

> "But where the claim of 'illegality' really involves issues of belief or fraud, proof is treacherous, and objective judgment, even by the most disciplined minds, precarious. That is why denaturalization on this score calls for weighty proof, especially when the proof of a false or fraudulent oath rests predominantly, not upon contemporaneous evidence, but is established by later expressions of opinion argumentatively projected, and often through the distorting and self-deluding medium of memory, to an earlier year *when qualifications for citizenship were claimed, tested and adjudicated.*" (Italics ours).

Thus it is seen that this Court recognized that an applicant becomes a citizen by virtue of a judicial decree or judgment which, at least, is not lightly to be overturned.

The substance of the position of the Solicitor General is that this action to denaturalize is in reality a trial *de novo* of the naturalization proceeding and upon the same evidence as existed at the time of the naturalization trial, plus subsequent conduct.

The Solicitor General admits that the *Baumgartner* and *Schneiderman* cases establish the rule that *conduct subsequent to naturalization is not of itself sufficient to establish the state of mind at the time of naturalization* (p. 15). If that be true then there is no basis for the judgment of the District Court for the reason that all conduct prior to naturalization is merged in the judgment of naturalization.

The case boils down to this: All matters complained of as happening prior to the naturalization proceeding are

merged in that judgment of the State Court; and all subsequent conduct is that of a citizen for which petitioner is answerable to the law if there be anything wrong in his conduct; but if there be wrong in his conduct, denaturalization and deportation is not the punishment.

In this type of case it is said that this Court is not bound by the findings of fact made in the trial court and that the rule in the ordinary case does not relieve this Court of the task of examining the foundation for the findings in a denaturalization case (322 U. S. 665, 670-671). In view of that rule and the admission that "subsequent conduct is not itself sufficient to establish the state of mind at the time of naturalization," and of the further fact that no effort was made by the trial court to separate, differentiate, or weigh separately, the conduct before, and that following the judgment of naturalization, it is necessary for this Court to take this case for review so that all of the evidence may be given its proper relevancy. It is obvious that the whole case cannot be presented to the court within the scope of a petition for certiorari. It is assumed that the court would not wish to so prejudge the case.

II.

The Solicitor General seems to narrow the question here to one point. He states that the question presented is whether a certificate of naturalization may be cancelled upon proof that an alien procured citizenship by fraudulently declaring on oath that he renounced allegiance to the country of his origin and that he would bear true faith and allegiance to the United States. (United States' Brief, p. 2.) In view of the narrowing of the contentions of the Government to the single question of the oath of allegiance something should be said about the oath of allegiance.

The statute provides that the applicant shall, before being admitted to citizenship, take the oath of allegiance in open court. All of the declarations appearing in the oath have necessarily been adjudicated. The ideas first appear in the Declaration of Intention wherein it is stated that the declarant intends to become a citizen of the United States and will renounce all fidelity to the native land (8 U. S. C. A., Sec. 731). Again in the application for naturalization it is stated that it is the applicant's intention to become in good faith a citizen of the United States and that it is his intention to renounce all fidelity to the sovereignty of which he is subject (8 U. S. C. A., Sec. 732). And then in the oath taken in open court, before he is admitted by the decree of the court, the applicant makes oath that he does then and there renounce and abjure all allegiance and fidelity to his native land or sovereign and that he will support and defend the Constitution and laws and bear true faith and allegiance to them and does so without mental reservation (8 U. S. C. A., Sec. 735).

The oath of allegiance follows upon the adjudication by the court that all necessary facts exist which enable the applicant to be and become a citizen. Taking the oath of allegiance is the step by which the applicant renounces his native country and attaches himself to the United States, and upon which the United States accepts him as a member of its citizenry.

Where there is jurisdiction to adjudicate a petitioner to be a citizen, and the adjudication is made, only the oath of allegiance is needed to complete the process. It is the judgment that qualifies the applicant to become a citizen; it is the oath that binds the applicant to fealty and makes him a citizen. An oath of allegiance would not be necessary except that Congress exacts it as an objective action that is readily provable.

The oath of allegiance cannot be detached from its mooring and considered as a thing apart. It is an essential part of the judicial proceeding and is entered into in open court as a part of the hearing and is allowed only after the court has adjudicated the very facts the oath contains. The facts contained in the oath are *res adjudicata* in the proceeding.

The minds meet when the court adjudicates that the jurisdictional facts are present and the applicant swears allegiance to his new sovereign. From that point on, neither may deny the right of the other.

It is not believed that the question of fraud in taking an oath of allegiance can be raised as is asserted here by the Solicitor General. It is not denied that an oath was taken as required by statute. That stands admitted. When the oath is taken the applicant is bound to the sovereign and may not be heard to say that he did not mean it, or that he had mental reservations; for immediately upon the taking of the oath the Government may exact every obedience from the new citizen as if native born.

And conversely the new citizen may ask every protection guaranteed under the Constitution and laws.

The oath taken is obviously binding upon the applicant. By it he renounces his allegiance to his native land and by it he owes fealty and allegiance to the United States. He cannot be heard thereafter to contradict it, and grave doubt exists if the Government, taking and accepting the oath, should be heard to challenge it.

If an oath is taken in court to testify to the truth, the witness is qualified to testify. If he commits perjury he is punished for his act, as a witness, but he is still a witness.

An oath of office qualifies the office holder. He then owes to the public the duties of his office and cannot be heard to deny his oath. Nor can the Government he serves question his oath.

When parties are married they may not later claim mental reservations and deny the obligations of the marriage.

It is the oath of allegiance that qualifies the applicant to be a citizen. The oath seals the mutual undertakings of the parties and the applicant cannot then be heard to say to the contrary, nor can the United States raise the question of mental reservations in the taking of the oath. There can be no mental reservations in an oath. It is taken without mental reservations, and none can be asserted.

If there were no oath taken the tendered citizenship would not for that reason operate or become effective. But where the oath was admittedly taken it is conclusive upon both parties.

If there is an oath taken in due legal form, as required by the Government's forms, it cannot be adjudicated to be void upon any ground of mental reservation.

Perjury is based upon the validity of the oath, not upon any mental reservations in the mind of one who takes the oath.

The Oath Creates the Status of Citizenship.

An oath of allegiance is a pledge of fealty. It cannot be recalled by the maker and when accepted and acted upon by the Government it is binding on both parties and the new status cannot be overturned or set aside upon

any thought that the oath is not binding. The oath is binding.

Suppose some treasonable conduct were indulged in after the oath were taken, can it be said that the Government shall have the option to treat the oath as fraudulent and cancel the certificate of naturalization, or to prosecute for treason and punish for that crime?

Obviously when the Government may punish the naturalized citizen for some crime because he is a citizen, then the oath must make him a citizen when the oath is taken. The oath here creates the *status* of citizenship.

The Government should not be heard to raise the question that an oath of allegiance was made with reservation, years after it received it as binding evidence of naturalization. If it is permitted to do so, no naturalized citizen may say his citizenship is safe for prior adjudications will not protect him.

In this case the Solicitor General admits that the naturalization proceeding in the State Court had every jurisdictional element; that it took the oath and gave the certificate of naturalization; and the Government is here estopped to challenge that record except for extrinsic fraud or lack of some jurisdictional element and no such defect is claimed to exist.

III.

Nothing is said by the Solicitor General about the subject of extrinsic fraud or intrinsic fraud and it must be assumed that he considers as well taken the point that only intrinsic fraud is pleaded in the complaint and that the judgment of naturalization in a State Court cannot be overturned on a complaint alleging intrinsic fraud.

IV.

The Solicitor General does not attempt to justify the action of the trial court in following the decision of the Seventh Circuit Court of Appeals in the case of *U. S.* v. *Krause*, 136 Fed. 2d 935, which refused to follow the *Schneiderman* case and which affirmed a judgment based solely upon conduct subsequent to the naturalization. Nor, does he attempt to justify the said Seventh Circuit Court of Appeals in its failure to notice the *Schneiderman* case in deciding this case and holding that there was no resemblance to the *Baumgartner* case.

In fact there is no reasonable justification for those acts and decisions. They appear to be wholly arbitrary.

V.

When this Court comes to a full consideration of all the facts in this case it will appear that the conduct of appellant was under great provocation and oppression and that he was trying to uphold the rights of naturalized citizens under our laws and Constitution.

In the *Baumgartner* case Justice Frankfurter points out that many Americans were confused over the situation in Germany. He says:

> "And during a period when new strength of the land of one's nativity was flamboyantly exploited before its sinister meaning had been adequately revealed even to some Americans of the oldest lineage, such old cultural loyalty, it is well known was stimulated into confusion of mind and sometimes to expressions of offensive exhuberance" (p. 674-675).

And there it is said that such views do not "necessarily prove want of devotion to the nation" (p. 674).

We are all learning now, the value of "hindsight". Many things are being daily revealed that were never known or dreamed of by the average person, which put a wholly different aspect to things than was known or suspected in 1937; but petitioner here is charged as if he knew all that has been learned since the war began in 1939.

All of which makes it more imperative that this case should be taken for review, for it is obvious that war hysteria is the basis of the action and the judgments below.

Conclusion.

The Solicitor General concedes every jurisdictional fact necessary to admit petitioner to citizenship. The admission is the equivalent of *res adjudicata*. His only challenge is to the oath of allegiance which is an essential part of the judgment of the State Court the facts of which are *res adjudicata*. The facts in the oath were adjudicated; otherwise the court would not have admitted petitioner to citizenship nor have accepted the oath.

On principle the United States should not be heard to challenge the sufficiency of the oath of allegiance which it exacted as a condition precedent to the judgment of naturalization and the issuance of the certificate of naturalization.

Wherefore this Court should take this case for consideration upon the merits and direct the writ of certiorari to issue, which is respectfully requested.

Respectfully submitted,

Ode L. Rankin,
Attorney for Petitioner.